Supreme Court, U.S.
FILED

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

No. _____

WALTER J. LAWRENCE

PETITIONER

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF

APPEALS FOR THE SIXTH CIRCUIT

PREPARED BY: WALTER J. LAWRENCE

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BEST AVAILABLE COPY

QUESTIONS PRESENTED

1. WHETHER A U.S. BANKRUPTCY COURT IS OR IS NOT A COURT OF THE UNITED STATES, AND IF IT IS NOT, WAS "ITS AUTHORITY"; THAT IS, IS THE AUTHORITY OF THE BANKRUPTCY COURT THE AUTHORITY OF A COURT OF THE UNITED STATES AS THAT PHRASE IS USED IN 18 USC 401, VIOLATED WHEN DEFENDANT FILED FILED EACH OF THE CHAPTER 7 VOLUNTARY PETITIONS IN SOUTH BEND, IN ON JULY 3, 1991 AND ON MARCH 23, 1992.

2. WHETHER THE COURT ERRED IN DENYING DEFENDANT'S MOTION FOR CHANGE OF VENUE BECAUSE "...CRIMINAL CONTEMPT IS NOT A CRIME 'IN THE CONSTITUTIONAL SENSE' AND IT 'DIFFERS FROM THE USUAL STATUTORY CRIME UNDER FEDERAL

LAW."

3. WHETHER THE "SPECIAL ASSESSMENT " IMPOSED AGAINST DEFENDANT BY THE GOVERNMENT, PURSUANT 18 USC 3013, CONSTITUTED PUNISHMENT FOR PURPOSES OF THE MULTIPLE PUNISHMENT PRONG OF THE DOUBLE JEOPARDY PROVISION OF THE 5TH AMENDMENT AND WHETHER THE COURT COULD LAWFULLY REMOVE THAT MONETARY PUNISHMENT BY ORDERING IT RETURNED TO DEFENDANT AFTER DEFENDANT HAD PAID THE CRIMINAL FINE TO THE CLERK OF THE COURT AND WHETHER THE COURT COULD THEN SUBSTITUTE, IN THE PLACE OF THE MONETARY PUNISHMENT, IMPRISONMENT PUNISHMENT

4. WHETHER THE COURT ERRED IN HOLDING THAT THE GOVERNMENT DID NOT HAVE TO PROVE THAT

DEFENDANT FILED HIS CHAPTER 7 VOLUNTARY PETITIONS, 91-31828 AND 92-30765, IN THE U.S. BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF MICHIGAN ON JULY 3, 1991 AND MARCH 23, 1992 WHERE THE INDICTMENT STATED THAT ON EACH OF THE TWO COUNTS OF NON-SUMMARY CRIMINAL CONTEMPT OF COURT THAT "ON OR ABOUT JULY 3, 1991 (AND COUNT II IS THE SAME IN ALL RESPECTS EXCEPT THAT THE DATE IS MARCH 23, 1992 AND THE CASE NO. IS 92-30765), IN THE SOUTHERN DIVISION OF THE WESTERN DISTRICT OF MICHIGAN AND ELSEWHERE, THE DEFENDANT, WALTER J. LAWRENCE, DID KNOWINGLY, WILLFULLY AND UNLAWFULLY DISOBEY AND RESIST A LAWFUL WRIT, PROCESS, ORDER, RULE, DECREE AND COMMAND OF THE UNITED

STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF MICHIGAN."

5. WHETHER THE COURT ERRED IN DENYING DEFENDANT THE OPPORTUNITY TO CONFRONT THE GOVERNMENT'S WITNESS AGAINST HIM, THE RETIRED U.S. BANKRUPTCY JUDGE, DAVID E. NIMS, JR.

LIST OF PARTIES

The parties to this case are the United States of America, Plaintiff-Appellee and Walter J. Lawrence, the Defendant-Appellant.

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The opinion of the United States Court of Appeals for the Sixth Circuit is unreported case no. 94-2309 and is printed in the Appendix at 1. The opinion of the district court, United States of America v. Walter J. Lawrence, No. 1:94-CR-45, dated November 8, 1994 and is reprinted in the Appendix at 1.

JURISDICTION

The decision of the court of appeals was entered May 17, 1995. No Motion for Rehearing was filed. This Petition for Certiorari was filed within 90 days of the dated of entry of the order of the Sixth Circuit dated May 17, 1995. Accordingly, this petition is filed

within the time allowed by law. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1) (1988).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case concerns the constitutionality of Defendant's trial and conviction for non-summary criminal contempt of court on two counts under 18 USC 401(3). These convictions were based upon the filing of each of two Chapter #7, title #11 voluntary petitions in bankruptcy on July 3, 1991 and March 23, 1992 allegedly in violation of a bankruptcy court order entered against Defendant by the U.S. Bankruptcy Court on February 19, 1991. The statue at issue reads as follows:

> "A court of the United States shall have the power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as...(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

The provisions of the United States Constitution involved in this case are: the Multiple Punishment prong of the Double Jeopardy provision of the 5th Amendment; the venue provisions of Article III, Section 2 and the Sixth Amendment; the Confrontation Clause of the Sixth Amendment. These Constitutional provisions are each set forth fully ~~in the Appendix~~ at 2, 4, 18, 26, 33, 61.

STATEMENT OF THE CASE

This case is about the alleged violation of a bankruptcy court order and Lawrence's conviction under 18 USC 401 for the alleged violation of that order. There were five (5) court orders entered which are relevant to this appeal. Those orders are:

1. Bankruptcy court order of February 19, 1991. This order was entered in a core proceeding;
2. Bankruptcy Court order of April 15, 1992. This order was entered in a non-core proceding;
3. U.S. District Court order of November 18, 1992 rejecting the bankruptcy court order of April 15, 1992 due to the bankruptcy court's lack of jurisdiction.
4. U.S. District Court order, the Honorable Judge Enslen, court order of June 20, 1994 denying Defendant's Motion Quash Indictment.

/

5. Judgment of conviction.

U.S. District Court Order of, Judge Quist, App. 3(d), sustaining Judge Enslen's position that the Order of the bankruptcy court, dated February 19, 1991, was an order of the U.S. District Court because the Bankruptcy Court was a "unit" of the U.S District Court and, as such, the two bankruptcy petitions filed by Lawrence in South Bend, IN on July 3, 1991, and on March 23, 1992, constitued violations of an order of "a court of the United States". 18 USC 401 in pertinent part. Therefore, according to Judge Enslen, U.S. Distrit Court Judge Gibson was reversing himself when he conducted his "de novo" review and rejected the bankruptcy court order

of April 15, 1992. However, Judge Gibson did not hold that he was rejecing his own order; he held that he was rejecting the bankruptcy court order of April 15, 1992 which held Lawrence in nonsummary criminal contempt of court on six counts.

Based upon the Government's interpretation and application of 18 USC 401, Lawrence violated that statute when he filed his voluntary chapter #7 petitions in South Bend, IN on July 3, 1991 and again on March 23, 1992. The Government's interpretation of 18 USC 401 led them to the erroneous conclusion that the bankruptcy court order of February 19, 1991 barring Lawrence from filing any further bankruptcy petitions led them to the conclusion that that order was issued by "...a

court of the United States...". Because, again according to the Government's interpretation of 18 USC 401, the order was an order of a court of the United states, Lawrence had, therefore, violated this statute. In other words, without having to be subjected to the constitutional rigors of appointment that an Article III Judge must pass thru, the Article III U.S. District Court Judge equates the Article I Bankruptcy Judge as an Article III Judge. The Judges of this Appeals Court doesn't have these powers: it appoints the bankrupcy judges to their position but this does not make them an Article III Court. If so, this would make Article III Judges appointing Article III Judges.

However, Judge Gibson conducted

his "de novo" review of the bankruptcy court order, before this criminal trial took place, holding Lawrence guilty of six counts of nonsummary criminal contempt of court, and found that the bankruptcy court did not have jurisdiction to hold Lawrence in criminal contempt of court. Lawrence raised this matter during the course of the criminal trial and Judge Enslen held that the bankruptcy court,

an Article I Court, was a "unit" of the U.S. District Court and, therefore, any order issued by the bankruptcy court was the same as an order issued by the U.S. District Court thereby making the bankruptcy judge, which is appointed to that position by an Article III Judge, namely the Judges of this Circuit,

an Article III Judge. With this new classification of the Bankruptcy Court, as equivalent to an Article III Court in place, the stage was set to convict Lawrence for having violated an order of "...a court of the United States...", 18 USC 401.

ISSUE I

18 USC 401 does not state whether a bankruptcy court is or is not a court of the United States and 18 USC 401 is a penal statute. The Sixth Circuit said in U.S. v. Wilson, 916 F.2d 1115, 1117 (CA6, 1990), that;

A. BASIC PRINCIPLES OF CRIMINAL LAW

It is an ancient rule of statutory construction that penal statutes should be strictly construed against the government. 3 N. Singer, Sutherland Stat. Const Sec. 59.03, at 11 (4th ed. 1984) (citing, e.g. Busic v. United States, 446 U.S. 398, 100 S.Ct. 1747, 64 L.Ed2d 381 (1980); United States v. Cox, 593 F.2d 46 (CA6, 1979).

Any crime "must be defined with appropriate definitions", Cantwell

v. Calif, 310 U.S. 296, 60 S.Ct. 900 (1939), in order to establish an ascertainable standard of guilt and provide corresponding tests to determine the applicability of the statute. The dangers of vagueness were described by the court as thus" "It leaves open...the widest conceivable inquiry, the scope of which no one can forsee and the result of which no one can foreshadow or adequately guard against." U.S. v L. Cohen Grocery Co., 25 U.S. 8, 89, 65 L.Ed. 516 (1920). Fundamental fairness requires that people be given notice of what constitutes reprehensible conduct so that they may avoid it. Lack of forewarning constitutes "indefiniteness". As stated by Mr. Justice Frankfurter in his dissent in Winter v. New York, 333 U.S.

507, 68 S.Ct. (1948):

"Indefiniteness" is not a quantitative concept.....

Due process requires that a statute be "sufficiently explicit to inform those who are subject to it what conduct in their part will render them liable to its penalties," and should not be couched in such terms that men of common intelligence must necessarily guess at its meaning and differ to its application," Whitney v. Calif., 274 U.S. 357, 47 S.Ct. 641 (1927). "The aim of the law," (18 USC 401), "is not to trap the unwary, but to warn the citizen of the prohibited." De Jonge v. Oregon, 299 U.S. 353, 57 S.Ct. 255 (1937).

Where no law prohibits certain conduct, such conduct cannot be characterized as a crime after its

occurrence, nor can it be a crime unless so defined by law. U.S. v. Witberger, 18 U.S. (5 Wheat) 76, 5 L.Ed 37 (1820), ("it is the legislature, not the court, which is to define a crime, and ordain its punishment."). With these principles in mind, Defendant turns to the application of the facts, in this case, to the law.

B. SUMMARY AND NONSUMMARY CRIMINAL CONTEMPT OF COURT

From 1978 to 1984, a U.S. bankruptcy court was considered a court of the United States in a limited basis. In the 1978 Bankruptcy Act, Public Law #95-589, Section 241(a), 92 Stat. 2549, 2671 (codified at 28 USC 1481) Congress provided as follows;

A bankruptcy court shall have the powers of a court of equity, law, and admiralty, but may not enjoin another court or punish a criminal contempt not committed in the presence of the judge of the court or warranting a punishment of imprisonment.

The mere fact that Congress passed this legislation, making a bankruptcy court a limited court of the United States and giving the bankruptcy courts the limited power under 18 USC 401, lends further support to Defendants argument that a bankruptcy court is not a court of the United States. For if the bankruptcy court did have the powers of a court of the United States then Congress would not have had to pass separate legislation, 28 USC 1481, and amending 28 USC 451 to make it clear that for purposes of nonsummary contempt of court a bankruptcy court is to be considered as having the same

nonsummary criminal contempt of court powers as a court of the United had. If one violated a court order issued by the bankruptcy court, then the bankruptcy court had the power punish that nonsummary criminal contempt of court. Subsequent to repeal of 28 USC 1481, the limited status given to a bankruptcy court, of nonsummary criminal contempt of court, means that one cannot be prosecuted under 18 USC 401, by any court, if one is charged with nonsummary criminal contempt of court of a bankruptcy court order.

Criminal contempt of court is dichotomized into summary and nonsummary. Under this statute, 28 USC 1481, Congress delegated to the bankruptcy court the power to punish criminal contempt <u>if the criminal contempt was summary in</u>

nature (committed in the presence of the court- summary in nature). In contrast to 28 USC 1481, 18 USC 401 allows "A court of the United States to punish for summary and nonsummary criminal contempt of court. However, to meet the objections raised in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982) "...Congress amended the 1978 Act, repealing section 213, which defined the bankruptcy court as 'a court of the United States' and section 1481, which conferred bankruptcy courts with the powers of courts of equity, law and admiralty and restricted the power of criminal contempt. By abrogating these broad grants of express jurisdiction, Congress withdrew its grant of

contempt power in the 1978 Act." In re Sequoia Auto Brokers Ltd., Inc, 827 F.2d 1281, 1288 (CA9, 1987). But, during this time span, of 1978 to 1984, a bankruptcy court still did not have the full powers that Congress delegated to "A court of the United States..", under 18 USC 401. This Statute, 18 USC 401, grants to a court of the United States summary and nonsummary criminal contempt of court powers. 28 USC 1481 limited the criminal contempt powers to summary contempt of court; "A bankruptcy court ...may not enjoin another court or punish a criminal contempt not committed in the presence of the judge of the court or warranting punishment of imprisonment. Repealed 28 USC 1481 (emp added). In other words, even during the interim period of 1978

to 1984, a bankruptcy court was not delegated the power under 28 USC 1481 that Congress granted to a court of the United States under 18 USC 401. The power of 18 USC 401 grants summary and nonsummary criminal contempt of court powers. 28 USC 1481 limited the grant of power to a bankruptcy court of nonsummary criminal contempt of court. Since repeal of 28 USC 1481, the dichotomy of summary/nonsummary criminal contempt of court powers of a bankruptcy court no longer exists. Repeal of 28 USC 1481 completely destroyed this dichotomy by removing the summary criminal contempt of court of a bankruptcy court and restoring it to its pre-1978 powers - those powers being of neither summary nor nonsummary criminal contempt of court. Under

18 USC 401, since 1984, a bankruptcy court is not a court of the United States; that is, a bankruptcy court does not have either summary or nonsummary criminal contempt of court powers. Making a bankruptcy court a unit of the U.S. District Court, under 28 USC 151, does not make the bankruptcy court a court of the United States under 18 USC 401. If 28 USC 451 does not include a bankruptcy court as a court of the United States, then it does not include it under 28 USC 151. Sequoia, supra, at 893 ("A review of the legislative history of Section 451 and the evolution of the definition of a 'court of the United States' further supports a determination that a bankruptcy court is not included under that section."). Therefore, the phrase

"its authority" and "its discretion in 18 USC 401, is in reference to "A court of the United States" and cannot include, within the definitional scope of a court of the United States, a U.S. bankruptcy court. As such, there does not exist any statutory criminal contempt of court powers under 18 USC 401 to punish or convict, or try Defendant for having filed the two Chapter 7 Voluntary Petitions in South Bend, IN on July 3, 1991 and March 23, 1992. If a baninkruptcy court is a court of the United States, then the bankruptscy court is the proper forum to try and convict Defendant. The fact that that forum did not try and convict Defendant is further evidence that the Bankruptcy Court is not a court of the United States. This is

precisely why Judge Gibson held that the bankruptcy court did not have jurisdiction to try and convict Defendant and is the very same reason why the Government chose the U.S. District Court as the proper forum to try and convict Defendant - a bankruptcy court is not a court of the United States. As such, 18 USC 401 does not authorize the Government to try and convict Defendnat for criminal contempt of court.

The fact that section 1481 expressly extended jurisdiction to the Bankruptcy Court granting summary criminal contempt of court lends further support to Defendant's position that this non-Article III court would not have otherwise been given jurisdiction under the rubric of "a court of the United States"

under 18 USC 401 if the court would have already been a court of the United States.

In Sequoia, supra 827 F.2d at 1287, fn# 7 the court said that:

> Title 18 provides no definition of 'court of the United States', as the term appears in 18 U.S.C. 401. However, because 401 was originally codified in title 28, we may look to the definition of 'court of the United States' provided in 28 U.S.C. 451.

18 USC 401 was previously codified under 28 USC 283.

In the case of In re Brickell Inv. Corp, 922 F.2d 696, 699 (CA11, 1991), the issue was "...whether a bankruptcy court has jurisdiction to award fees under Section 7430 of the Internal Revenue Code."

The Court went on to say that:

> Thus, for a bankruptcy court to have jurisdiction under 7430, it must be considered a 'court of the United States.' It is undisputed that a bankruptcy court is not an Article III court. See Northern Pipeline

Construction Co. v.Marathon Pipe Line Co., 458 U.S. 50, 60-61, 102 S.Ct. 2858, 2865-66, 73 L.Ed.2d 598 (1982). With respect to statutes other than 26 U.S.C. 7430, this Circuit has adhered to the position that the phrase "court of the United States" should be interpreted to mean an Article III court. In Bowen v. Commissioner of Internal Revenue, 706 F.2d 1087 (CA11, 1983) the court held that despite the Equal Access to Justice Act's ("EAJA") reference to "any court having jurisdiction of the action," only a "court of the United States," as defined by 28 U.S.C. 451 as an Article III court, has jurisdiction to award attorney's fees under 2412(d)(1)(A) of EAJA.

The Brickell court finally held that:

Accordingly, we hold that since a bankruptcy court is not an Article III court, it cannot be considered a "court of the United States" for purposes of awarding fees under 7430. p.701.

A bankruptcy court is not a court of the United States in interpreting the following statutes:

1. 28 USC. 1927. Matter of Richardson

52 B.R. 527, 531 32 (Bankr. W.D.Mo. 1985).

2. 28 USC 1915. In re Bauckey, 82 B.R.13 (Bankr.N.J. 1988);

In re Perroton, 958 F.2d 889 (CA9, 1992)

3. 28 USC 2201. Matter of Becker's Motor Transp., Inc., 632 F.2d 242, 247 (CA3, 1980).

The case of In re Perroton, supra at 894 turns Judge Enslens and Judge Quist's holding, that "its authority" phrase in 18 USC 401 includes a bankruptcy court as a court of the United States, into nonsense. The Perroton court said that:

> The fact that Congress initially amended 451 explicitly to add bankruptcy courts whose judges are entitled to hold office for a term of fourteen years supports the assertion, already made above, that the "good behavior" language of 451 included only Article III courts and not Article I bankruptcy courts.

The ultimate rejection of this addition by a subsequent amendment is further indication that Congress did not intend 451 to include the provisions embodied in the rejected amendment. Singer, supra, at 48.18; Tahoe Regional Planning Agency v. Mc Kay, 769 F.2d 534, 538 (CA9, 1985). This legislative history further illustrates that the Shumate court ered in concluding that a bankruptcy court is a "court of the United States under the "good behavior" language of 451 by virtue of 151, 152(A)(1), and 152(e). This is particularly true because 151 and 152 were added to Title 28 in the same law that nullified the express addition of the bankruptcy court to 451. BAFJA, Pub.L. 98-353, Title I, 104(a), 98 Stat. 336 (July 10, 1984). The Shumate theory, thus is reduced to nonsense. It would have Congress deleting its earlier amendment, which expressly added the bankruptcy court to 451, and instead have the legislature choosing to impliedly include the bankruptcy court in that definition under the section's "good behavior" language through a number of other scattered provisons regarding the bankruptcy court.

There is another criminal contempt statute which is similar to 18 USC 401, It is 18 USC 1503. In the case of U.S.v. Simmons, 591 F.2d 206, 209 (CA3, 1979), the court said:

Section 1503 is a contempt statute. It was enacted as the counterpart to 18 USC 401..."

In the case of U.S.v. George, 625 F.2d 1081, 1087 (CA3, 1980), the question was "whether the District Court of the Virgin Islands is a 'court of the United States within the meaning of the statute under which George was convicted. The court said;

> It remains then to decide whether the District Court of the Virgin Islands, although a teritorial and not a federal court, may be regarded as a court of the United States for purposes of 18 U.S.C. 1503, the statute for the violation of which George has been convicted. We think that the answer must be in the negative. (emp added).
> The court went on to say that :
> We conclude that George's conviction on the second count for violation of 18 U.S.C. 1503 must be reversed.

Just as the court applied the definition of court of the United States, as found in 28 U.S.C. 451,

to the criminal statute 18 U.S.C. 1503, it should be done likewise in this case; that is, the definition of court of the United States, as found in 28 U.S.C. 451, should be applied to 18 U.S.C. 401 thereby excluding a bankruptcy court from the list of courts that can consitutionally be clasified as a court of the United States. And when that exclusion takes place, it follows that Defendant could not be tried or convicted under 18 U.S.C. 401 and the conviction must be reversed.

In the case of Matter of Richardson, 52 B.R. 527, 531, 532 (Bkrtcy, 1985), the court said:

> It has, in fact, been uniformly held that bankruptcy courts do not come within the definition of a 'court of the United States.' That expression is defined in section 451, Title 28, United States code, as including only 'the Supreme Court of the United States,

courts of appeals, district courts constituted by chapter 5 of this title, including the Court of International Trade and any court created by Act of Congress the judges of which are entitled to hold office during good behavior.' This definition has been said by higher courts to exclude the bankruptcy court. 'Bankruptcy Courts are not included in this enumeration and they are not courts whose judges hold office during good behavior. This suggests that they are not courts of of the United States...'. Matter of Becker's Motor Transp., Inc., 632 F.2d 242, 247 (3d Cir. 1980). A 'Court of the United States,' in its technical sense, is one created under Article III of the Constitution. U.S. v. George, 625 F.2d 1081, 1087 (3d Cir. 1980). (emp added).

It has already been established in the Western District of Michigan that a bankruptcy court does not have jurisdiction to hold anybody in nonsummary criminal contempt of court. In re Walter J. Lawrence, 164 B.R. 73. That is why, in the second trial of Lawrence, that the bankruptcy court did not try and convict Defendant - It is not a

court of the United States. As such, it does not have jurisdiction to try and convict Defendant for summary or nonsummary criminal contempt of court. If the bankruptcy court does not have jurisdiction to try and convict for either summary or nonsummary criminal contempt of court, under 18 USC 401, it is because a bankruptcy court is not a court of the United States at least for purposes of 18 USC 401.

Certainly, if a bankruptcy court cannot be considered a court of the United States for purposes of 28 USC 2201, 26 USC 2201, 28 USC 1915, 28 USC 1927 because that tribunal is not an Article III court, it has to follow that neither can it be considered a court of the United States for purposes of a criminal statute, 18 USC 401, for

the very same reasons; that is, because a bankruptcy court is not an Article III court. And if the bankruptcy court is not an Article III court then Defendant could not be tried and convicted under 18 USC 401 for "its authority", 18 USC 401, is not the authority of a bankruptcy court since the bankruptcy court is not an Article III court.

C. CONTEMPT POWER AFTER PASSAGE OF 28 USC 157

The government would contend that 28 U.S.C. 157 and 11 U.S.C. 105 impliedly confer the contempt power on bankruptcy judges.

Section 157 is at the heart of Congress's response to the Supreme Court's ruling in Northern Pipeline. It was designed to segragate those "core" proceedings over which a

bankruptcy judge could presumably exercise plenary authority, 28 U.S.C. section 157(b)(1), from "related" proceedings over which an article I bankruptcy judge could constitutionally only determine facts and recommend dispositions to article III judges, 28 U.S.C. section 157(c)(1); In related proceedings the bankruptcy judge submits proposed findings of fact and conclusions of law to

In applying this principle, 18 USC 401 must be strictly construed that a bankruptcy court is not a court of the United States.

Under title 18, Defendant could only find one statute which clearly defined a bankruptcy court as a court of the United States. That statute is the immunity of witness statute, 18 USC 6001. This statute

was passed by Congress on November 6, 1978, P.L. 95-598, Title III Section 314(1), 92 Stat 2678. This same act added, by section 402(a), to USC 401 "a United States bankruptcy court established under chapter 6, title 28, United States Code." However, in 1984, Congress amended 18 USC 401 again by deleting from 18 USC 401 a bankruptcy court as a court of the United States. Yet, at the same time, Congress did not amend 18 USC 6001(4). Today, a bankruptcy court is not a court of the United States under 18 USC 401, but a bankruptcy court is a court of the United States under 18 USC 6001(4).

If Congress wanted a bankruptcy court to have the same criminal contempt of court powers as found under 18 USC 401, it could have

done so either under title or title 11. just as it did with the U.S. Tax Court. A comparison of 26 USC 7456(c) to 18 USC 401 clearly exhibits that the power granted to the U.S. Tax Court, an Article I Tribunal is the same contempt of court granted to an Article III court, which is a court of the United States as found in 18 USC 401. Also see Tax Court Rule 13(d) ("Contempt of Court may be punished by fine or imprisonment within the scope of Code Section 7456(d).").

Finally, if "its authority", as found in 18 USC 401, does not include the authority of a bankruptcy court, then it is because Congress never intended a bankruptcy court to be a court of the United States under 18 USC 401. As such, Lawrence could not have violated 18 USC 401 when he filed his bankruptcy petitions.

ISSUE 2

The fundamental principle that has animated this Court's jurisprudence over the last century is the rule of necessity. Encroachments on fundamental protections afforded other criminal defendants in the name of the special interest served by contempt, vindication of the court's authority, have been allowed only to the extent that the encroachment is genuinely necessary to the vindication of that interest. The lower Court's and the Governments position is the venue provisions of the U.S. Constitution should not apply to this non-summary criminal contempt of court case ignores that fundamental principle of necessity, as well as the radical changes

wrought by increasingly strict application of the principle, from In re Debs, 158 U.S. 564 (1895), to Young v. United States ex rel. Vuitton et Fils S.A. 481 U.S. 787 (1987) and most recently U.S. v. Dixon, 113 S.Ct. 2849 (1993).

The rationale of Bloom v. Illinois, 391 U.S. 194 (1968), rejecting the "necessity" perceived in In re Debs for denying a jury trial and in U.S. v. Dixon rejecting the necessity perceived in denying the Double Jeopardy Clause protections of the 5th Amendment, in a serious contempt prosecution, compels the same result here. The protection against being tried in a venue (State and District) is a fundamental protection of the organic provisions of the U.S. Constitution which is reinforced

by the Sixth Amendment. The Government and the lower courts have not advanced any necessity for denying the protections of the Venue provisions to this non-summary criminal contempt of court case.

Once it is clear that normal venue provisions of Article III, section 2 and the Sixth Amendment apply here, there can be little doubt that Defendant was tried and convicted in the improper venue.

It is clearly evident from the reading of the Indictment that Lawrence has been criminally charged with the crime of nonsummary criminal contempt of Court and that the alleged crimes took place on July 3, 1991 and March 23, 1992 in the U.S. Bankruptcy Court located in the Northern District of the State of Indiana, city of South

Bend, IN.

Article III, Section 2, Clause 3 of the U.S. Constitution, which mandates the venue of all criminal trials, in pertinent part, reads as follows;

"The trial of all crimes...shall be held in the State where the said Crime shall have been committed"

The Sixth Amendment of the U.S. Constitution, which defines the geographical location of the jurors, states, in pertinent part, that:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where the crime shall have been committed.

Fed.R.Crim.P. #18, in pertinent

part, states that:

Except as otherwise permitted by statute or by these rules, the prosecution shall be had in a district in which the offense was committed.

The Northern District of Indiana located in South Bend, IN, established by 28 USC 94, is the geographical location where the alleged crimes took place on July 3, 1991 and March 23, 1992. This is what the Indictment itself says.

The Western District of Michigan, established by 28 USC 102(b), is the place where the Grand Jury issued it's Indictment that states that Defendant violated 18 USC 401(3) by filing voluntary title 11 petitions in U.S. Bankruptcy Court in South Bend, IN Bankruptcy Court on July 3, 1991 and again

on March 23, 1992. These are clearly two different districts and two different districts located in two different States.

It is not where the order of February 19, 1991 was created which controls, but, rather it is "...where the said crime shall have been committed..", which controls as to where the trial should have taken place.

Venue lies in any district in which the offense was committed. U.S. v. O'Donnell, 510 F.2d 1190, 1192 (CA6, 1975), cert denied, 421 U.S. 1001, 95 S.Ct. 2400, 44 L.Ed.2d 668. In this case, the offenses are alleged to have been committed in their entirety in South Bend, IN.

The Government bears the burden of proving by a preponderance of

the evidence that venue was proper as to each count. U.S. v. Beddow, 957 F.2d 1330, 135 (CA6, 1992), citing U.S. v. Barsanti, 943 F.2d 428, 434 (CA4, 1991). The government has failed miserably to carry its burden of proving by a preponderance of the evidence that venue of this case is proper in the Western District of Michigan.

In contrast, Lawrence has presented two provisions of the U.S. Constitution, Federal Rules of Criminal Procedure #18, which deal exclusively with venue in a criminal context. Based upon the case of U.S. v. Beddow, 957 F. 2d 1330, 1350 (CA6, 1992), this case should have been transferred to the Northern District of Indiana where the government led the Grand Jury to believe that Defendant

committed criminal contempt of court in South Bend, IN on July 3, 1991 and again on March 23, 1992.

In U.S. v. Johnson, 65 S.Ct. 249, 251, 323 U.S. 273, 276 89L.Ed 236 (1944), the Court said that;

"the Framers wrote into the Constitution that 'The Trial of all crimes...shall be held in the State where the said crimes shall have been committed...' Article III, section 2, cl.3. As though to underscore the importance of this safeguard, it was reinforced by the provision of the Bill of Rights requiring trial 'by an impartial jury of the State and district wherein the crime shall have been committed.' Sixth Amendment."

In order to decide where the crimes occurred, this court must determine what acts by the defendant constituted the crimes charged. Johnston v. U.S., 351 U.S. 215, 220-21, 76 S.Ct. 739, 742-43, 100 L.Ed 1097 (1956). To determine venue,

this court must examine "the key verbs in the statute defining the criminal offense" to find the scope of relevant conduct. U.S. v. Tedesco, 635 F.2d 902, 905 (CA1, 1980), cert denied, 452 U.S. 962, 101 S.Ct. 3112, 69 L.Ed.2d (1981). The keys verbs relevant to the crimes charged in this case are "Disobedience or resistance". 18 USC 401(3). Therefore, only actions by the defendant which constitues either disobedience or resistance are probative in determining venue for those offenses.

It has to follow that because non-summary criminal contempt is a crime in the ordinary sense, Article III, Section 2, Clause 3 should have been applied by the government prosecuting Defendant in the State of Indiana rather in

the State of Michigan.

JURY INSTRUCTIONS

Lawrence requested that the Court give the Jury instruction that the crimes were committed in Grand Rapids, MI and South Bend, In on each of the dates. The court gave the jury instruction, #2.02, in pertinent part, as follows:

> It is not an element of the offense that defendant file same petition in both Michigan and Indiana.

Lawrence requested this jury instruction because the Indictment stated that:

> On or about July 3, 1991, in the Southern Division of the Western District of Michigan and elsewhere..

The Indictment goes on to state that the "elsewhere" was "...in the United States bankruptcy Court in the Northern District of Indiana..". These were the two

geophical locations in the Indictment that alleged that:

> "...the Defendant, WALTER J. LAWRENCE did knowingly, willfully and unlawfully disobey and resist a lawful writ, process, order, rule decree and command of the United States Bankruptcy Court for the Western District of Michigan;".

The Government failed to present any evidence that Lawrence was even in Grand Rapids, MI on July 3, 1991 and March 23, 1992 let alone present any evidence that Lawrence did "...unlawfully disobey and resist a lawful writ, process, order, rule, decree and command of the United States Bankruptcy court for the Western District of Michigan. Therefore, the Court erred in <u>not</u> properly instructing the jury and Lawrence was convicted based upon the charges in the indictment.

ISSUE III

The trial court held that because it did not impose the $100.00 special assessment against Lawrence that he was not, therefore, sentenced. It must be remembered that the Plaintiff in this case is the United States of America. Whild the Sovereign is compposed of three branches it cannot bse said with any degree of accuracy that Lawrence was not punished for purposes of the multiple punishment pring of the Double Jeopardy Clause when the EXecutive branch of the Plaintiff instructed Lawrence to pay the #100.00 to it at lest 72 hours before the sentencing hearing. The Sixth Circuit held, in its order of May 17, 1995, that " A special assessment does not constitute a multiple punishment

for the same offense because it is not a "fine". page #3.

The Court in Griffin, supra 884 F.2d at 656 gave that which Defendant believes to be the most compelling argument;

In light of the foregoing, we cannot accept appellant's contention that section 3013 is in reality a revenue raising statute. 'Revenue bills are those that levy taxes in the strict sense of the word, and are not bills for other purposes which may incidentally create revenue.' Twin City Ban v. Nebeker, 167 U.S. 196, 202-03, 17 S.Ct. 766, 76869, 42 L.Ed. 134 (1897); see also Millard v. Roberts, 202 U.S. 429, 436-37, 26 S.Ct. 764, 675, 50 L.Ed. 1090 (1906); U.S. v. Norton, 91 U.S. 566, 569, 23 L.Ed. 454 (1876). 'If an exaction be clearly a penalty it cannot be converted into a tax by the simple expedient of calling it such.' U.S. v. LaFranca, 282 U.S. 568, 572, 51 S.Ct. 278, 280, 75 L.Ed 551 (1931); see also U.S. v. Constantine, 296 U.S. 287, 294, 56 S.Ct. 223, 80 L.Ed. 233 (1935). Indeed, Congress did not even call section 3013 a 'revenue bill' or 'tax'. In S.Rep. No. 497, 98th Cong., 2d Sess., reprinted in, 1984 U.S. Code Cong., & Admin. News 3182 at 3607, et seq., the Senate Committee on the Judiciary referred to 'special assessments' as the term was used in S.2423,

the originally proposed Victims of Crime Assistance Act, as 'Penalty Assessments Fines', and 'penalty assessment fees'. Id. 1984 U.S. Code Cong., & Admin. News at 3619. (emp added).

In 1984 Cong. and Admin. News 3610 it is reported that;

"The following is a section-By-Section analysis of S.2423, as reported by the Committee on the Judiciary:" Turning to page #3619, "Part D: ; Definitions"

"Section 401 sets forth definitions as used in the various titles of the Act unless specifically defined elsewhere, including definitions of 'crime' and 'criminal fines.".

The reference to "S.2423" by the court in Griffin, supra, is to Senate Bill #2423. Section 401 of that bill reads as follows;

(1) "crime" means a criminal offense as defined by Federal, State, or common law, or an act which would constitute such an offense but for the fact that the perpetrator of the act lacked capacity to commit the offense, but does not include an offense

prosecuted in Indian tribal courts or Courts of Indian Offenses.

(2) "criminal fines" means all pecuniary punishments imposed by a Federal court upon a person, a corporation, or other entity convicted of a crime (including all fined imposed for criminal violation of motor vehicle and antitrust laws) and all money derived from forfeited appearance bonds posted by Federal criminal defendants, but does not include criminal fines imposed by Indian tribal courts or Courts of Indian Offenses."

When the court in Griffin, supra, found the term "special assessments" as used in 18 USC 3013 was the same "...as used in S.2423",

it was intended to be punishment imposed against a defendant as part of his sentence for that crime. This is most certainly a substantial question of law or fact that if resolved in Defendant's favor is likely to result in reversal or for an order for a new trial.

The next issue is that on November 2, 1994 the court entered the following order;

> Following the sentencing hearing held on October 28, 1994, it was determined that special assessments would not be ordered. Therefore,
>
> IT IS ORDERED that the Clerk of the Court return to the defendant, Walter J. Lawrence, the amount of $100.00, previously paid as a special assessment in this case.

The Court entered this order after this court characterized the special assessment as a tax and then, while concurrently maintaining it's position that the special assessment is a tax, this court recognized the potential that the

fine could be, in addition to being a tax, regarded as criminal punishment, and the court granted the Government's motion to rebate the $100.00 penalty assessment imposed against Defendant and receipted for by the Government.

On August 29, 1994, on no part of this Defendant, except that he was criminally convicted of nonsummary criminal contempt,

of court under 18 USC 401, which authorizes either imposition of "...a fine or imprisonment...", as criminal punishment following conviction, the U.S. Attorney's office sent a letter to Defendant imposing a $100.00 criminal fine against Defendant. That letter, in pertinent part, stated as follows;

> In order to eliminate any further hearings we would encourage that you mail us a certified check or money order in the above amount (i.e. $100.00), payable to the Clerk, U.S. District Court, at least 72 hours prior to the sentencing." Appendix at 89.

On September 7, 1994, Defendant personally went to the Clerk of ~~this~~ the Court and paid the $100.00 in cash. The Clerk then receipted Defendant for the payment of the $100.00 fine.

On November 2, 1994, the Court Ordered that the Clerk of the Court rebate the $100.00 fine to Defendant.

However, this did not undue the period of time, from September 7, 1994 to present, in which Defendant was being punished in the form of the $100.00 fine. That period of time not be ordered. In pertinent part, the Order says:

> IT IS ORDERED that the Clerk of the Court return to the defendant, Walter J. Lawrence, the amount of $100.00, previously paid as a special assessment in this case.

The Court entered this order after the court characterized the special assessment as a tax and then, while concurrently maintaining it's position that the special assessment is a tax, the court recognized the potential that the fine could be, in addition to being a tax, regarded as criminal punishment, and the court granted the Government's motion to rebate the $100.00 penalty assessment imposed against Defendant and

receipted for by the Government.

The question that naturally arises is whether the $100.00 monetary imposition of the $100.00 fine, imposed by the Executive branch of the Government as opposed by the Judicial branch of the Government, is, therefore, any less of a punishment for nonsummary criminal contempt of court, and is any less of a punishment because it was imposed by the Executive branch of the Government as opposed to the Judicial Branch. Defendant has suffered one of the alternatives of 18 USC 401, the fine, and as such, no further punishment can be imposed. The fine which was imposed against Defendant was the two $50.00 fines imposed against him by the Sovereign on August 29, 1994 pursuant to 18 USC

3013. The government has already agreed that both a fine and imprisonment can not be imposed against Defendant. In In re Bradley, supra 318 U.S. at 52, 63 S.Ct. at 471 the U.S. Supreme Court, in finding a violation of the Double Jeopardy Clause of the Fifth Amendment, stated;

> When, on October 1, the fine was paid to the clerk and receipted for by him, the petitioner had complied with a portion of the sentence which could lawfully have been imposed.

In the case of U.S. v. Holmes, 822 F.2d 481, 499 fn#32 (CA5, 1987), the Court said;

> We recognize that, at least conceptually, returning a fine arguably is or might be made different from striking a prison sentence that has already been partially served on the theory that days spent in jail cannot be returned, but money can be. However, this is not a satisfactory rationale on which to distinguish Bradley. Where, for example, one month of a nine-month sentence has been

served, the month served can be 'returned' by then treating the sentence as one for eight, instead of nine months (and perhaps also then giving credit for the month served). Nevertheless, this was not the approach of Bradley as reflected in the text, infra. (emp added).
In Holmes, 822 F.2d at 500, the Court said:

If return of the fine allows the defendant to be treated as if the fine had never been imposed and paid, which is what the government argues, then the Bradley defendant would have been made to serve the balance of his prison sentence, or at least all but four days thereof. The contemnor in Bradley was entitled to be immediately released from prison on payment of the fine, notwithstanding its elimination from the sentence later the same day and the prompt tender of its return to the contemnor, only because return of the fine would be wholly ineffective to change the fact that the contemnor had already fully satisfied the fine portion of his sentence.

The court, in Bradley, fully recognized that giving the fine back to the defendant did not constitute giving back to the defendant the period of time which the Sovereign held the fine. This

was punishment that the Sovereign could not give back to the Defendant and that is why he was immediately released from prison. That is the exact same case here, with the exception that Defendant is not currently in prison. However, that does not change the fact that the Sovereign has had the $100.00 penalty in it's possession and the return of the $100.00 does not, by virtue of that return, constitue return of the period of time that the Sovereign held the $100.00 punishment. That cannot be returned to Defendant. Therefore, imprisonment cannot be substituted for the fine.

The Court , in Holmes, went on to say that;

...the government cites no authority for the proposition that the court can compel a contemnor to take back a fine and to accept, instead, a

term in prison. Nor does the government indicate whether appellant would be entitled to receive interest as compensation for the lost use of his funds if he sought to recoever them. Bradley alone, even without these additional problems, requires us to hold that attempts to return the fine to appellant will not justify the execution of appellant's prison sentence. (emp added).

The court, in Holmes, finally held, at page #484, that;

Therefore, we hold, pursuant to In re Bradley, 318 U.S. 50, 63 S.Ct.. 470, 87 L.Ed. 608 (1943), that appellant, since he has fully paid his fine, must be discharged from his sentence of imprisonment.

From September 7, 1994 until the Court ordered the Clerk of the Court, on November 2, 1994, to return to Defendant the $100.00 penalty imposed against Defendant by the Sovereign, Defendant served the maximum punishment that the Court can impose against Defendant. For this Court to attempt to distinguish this case from Bradley, by holding that the $100.00 fine

wasn't part of the sentence because the $100.00 was imposed by the Executive Branch of the Government rather than by the Judicial Branch of the Sovereign is not a valid legal argument and it raises a substantial question of law or fact likely to result in reversal or an order for anew trial. The time from September 7, 1994, when Defendant paid the $100.00 fine to the Clerk of this Court until Nvember 2, 1994 when this Court ordered the Clerk of the Court to return the $100.00 constitues punishment for the crime which Defendant was convicted of. Merely returning the $100.00 to Defendant does not erase the period of time which Defendant was being punished - the period of time from September 7, 1994, thru November 2, 1994.

This cannot be returned to Defendant. A secondary problem is that the Government is being unjustly enriched in that they took property from Defendant without just compenstaion, the property being the $100.00 "special assessment".

Just as the Defendant refused to accept the return of the fine in In Re Bradley, 318 U.S. 50, Defendant in this case will refuse return of the $100.00 punishment imposed against Defendant by the Sovereign.

In the case of Department of Revenue of Montana v. Kurth Ranch, 62 LW 4429, (June 6, 1994) the issue was "...whether a tax on the posession of illegal drugs assessed after the State has imposed a criminal penalty for the same conduct may violate the constitutional

prohibition against successive punishments for the same offense." 62 LW at p. 4430. The Court said, at page 4433, that;

Although we have never held that a tax violated the Double Jeopardy Clause, we have assumed that one might. In the context of other constitutional requirements we have repeatedly examined taxes for constitutional validity. We have cautioned against invalidating a tax simply because its enforcement might be oppressive or because the legislature's motive was somehow suspect, A, Magano Co. v. Hamilton, 292 U.S. 40, 44 (1934). Yet we have also recognized that 'there comes a time in the extension of the penalizing features of the so-called tax when it loses its character as such and becomes a mere penalty with the characteristics of regulation and punishment.' Id., at 46 (citing Child Labor Taxe Cse, 259 U.S. 20, 38 (1922). That comment, together with Halper's unequivocal statement that labels do not control in a double jeopardy inquiry, indicates that a tax is not immune from double jeopardy scrutiny simply because it is a tax.

Whether this court wants to call the $100.00 payment a tax, a fine, or a special assessment, ~~this~~ the Court ~~is~~ was doing nothing more

than playing semantics with Defendant's freedom. Just as in Montana, supra, there are features that set 18 USC 3013 apart from a tax. First, the so-called tax is conditioned on the commission of a crime. Montana, 62 LW at 4433. In this case, the special assessment is conditioned on the twin crimes of nonsummary criminal contempt of court. That condition is "significant of penal and prohibitory intent rather than the gathering of revenue." Montana, 62 LW at 4433". "Moreover the Court has relied on the absence of such a condition to support its conclusion that a particular federal tax was a civil rather than a criminal sanction." Montana, supra 62 LW 4433. In this case, that absence is not present. That alone leads to the conclusion

that the special assessment is a criminal sanction. "In this case, the tax assessment not only hinges on the commission of a crime, it also is exacted only after the taxpayer has been arrested for the precise conduct that give rise to the tax obligation. Persons who have been arrested for possessing marijuana constitute the entire class of taxpayers subject to the Montana tax." Montana, supra 62 LW 4433-4. That is exactly the case here, with the exception that Defendant was not arrested but he was convicted of a crime. The entire class of taxpayers, subject to the special assessment, 18 USC 3013, are those who have been convicted of a crime. In the Sixth Circuit Court of Appeals case of Yavorsky v. U.S., 1 F.2d 169 (1924), the

issue was;

whether or not the learned District Judge could remit the fine and continue the prison sentence, after the fine had been paid by him into the treasury of the United States, and defendant had served five days imprisonment. In other words, had the defendant, by the payment thus made, fully suffered one of the alternative punishments to which alone the law subjected him, and, if he had, was the power of the court to punish further gone?

The Sixth Circuit held that;

The court was without power to remit the fine after the punishment imposed had been suffered, and the writ of habeas corpus should have been allowed, and the prisoner discharged.

The order denying the petition for the writ of habeas corpus and for the release of the prisoner is reversed, and the case is remanded to the District Court, with directions to proceed according to law.

As this Court said in Whalen v. U.S., 445 US 684, 689, 63 L.Ed.2d 715, 100 S.Ct. 1432;

If a federal court exceeds its own authority by imposing multiple punishments not authorized by Congress, it violates not only the specific guarantee against double jeopardy, but also the constitutional principle of separation of powers

in a manner that trenches particularly harshly on individual liberty.

By order of the trial court, entered on December 1, 1994, the court ordered the $100.00 penalty asessment to "...be deposited into the Registry Fund of the Court pursuant to 28 USC 2041." Appendix at 10-11. Pursuant to this statute, these funds are currently in the U.S. Treasury.

ISSUE IV
CONFRONTATION CLAUSE OF THE SIXTH AMENDMENT

The Sixth Amendment to the United States Constitution states: "In all criminal prosecutions, the accuse shall enjoy the right...to be confronted with the witnesses against him." Of all the rights covered by the Confrontation Clause, the right to cross-examine witnesses is perhaps the most important. In its earliest decision interpreting the Confrontation Clause, the Supreme Court wrote that cross-examination gives the accused an opportunity to "test the recollection and sift the conscience of the witness..." Matox v. United States, 156 U.S. 237, 242, 15 S.Ct. 37, 339, 39 L.Ed. 409 (1895). Twenty Four years ago, the Court called cross-examination the "greatest legal engine ever

invented for the discovery of truth." California v. Green, 399 U.S. 149, 158, 90 S.Ct. 1930, 1935, 26 L.Ed.2d 489 (1970) (quoting 5 J. Wigmore, Evidence Section 1367 (3d ed. 1940). In 1990, the Court reiterated this point: "The central concern of the Confrontation Clause is to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of facts." Maryland v. Craig, _____ U.S._____, 110 S.Ct. 3157, 3163, 111 L.Ed.2d 666(1990).

According to the government, the complainant against Lawrence in this case is retired U.S. Bankruptcy Judge, David E. Nims, Jr; "MS. LANDMAN: First of all, as this Court is probably aware,

Judge Nims is the complainant in this case. He is the one that referred the case to our office for this prosecution." page #43, line 25 thru page #44, line #3 of the triala transcript; "MR. DETTMER: Thank, Your Honor. We wanted to proceed on a spearate record this morning and proffer the Honorable David Nims as a witness in this case. I understand the Cort's ruling as to its reasoning why it doesn't feel that Judge Nims is necessary. But I believe in essence, as the complaining witness in a criminal case. we have to at least make a record of what his testimony would be." (emp added) page 47 of the Trial Transcript, lines 6 thru 13.

Lawrence requested, and the court issued, a subpoena for David E. Nims, Jr. to appear and testify

at trial. However, the court made a pronouncement from the bench that the subpoena is quashed and notified the Kent County Sheriffs Dept. not to serve the subpoena.

The court ordered David E. Nims, Jr. to appear before the court, in the absence of the jury, and give testimony. He did appear but the court denied Defendant any opportunity to crossexamine the witness against Defendant: "THE COURT: There will be no cross at this time." TT page #59, line #2.

As the Supreme Court said in Maryland v. Craig, supra;

The primary object of the constitutional provision in question was to prevent depositions or ex parte affidavits such as were sometimes admitted in civil cases, being used against the prisoner in lieu of a personal examination and cross-examination of the witness in which the accused has an opportunity, not only of testing

the recollection and sifting the conscience of the witness, but of compelling him to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief.

The Trial Court denied to Lawrence the right to face his accuser and for David E. Nims to stand face to face with jury in order that they may look at him, and judge his demeanor upon the stand in which he gives his testimony whether he is worthy of belief.

PRAYER FOR RELIEF

For all of the foregoing reasons, Lawrence prays that this court reverse the order of conviction of the trial court and the order of the Sixth Circuit affirming that order.

CERTIFICATE OF SERVICE

This is to certify that on

the 1st day of June, 1995, Walter J. Lawrence did mail two copies of his Petition for Writ of Certiorari, and Appendix to Edith A. Landman, 399 Federal Building, 110 Michigan, N.W., Grand Rapids 49503.

Respectfully submitted,

Walter J. Lawrence
Defendant/Appellant
in pro per
23205 Gratiot, #188
Eastpointe, MI 48o211

Dated: June 1, 1995

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

No._____

UNITED STATE OF AMERICA,

Plaintiff-Appellee

v.

WALTER J. LAWRENCE

Defendant-Appellant

DEFENDANT LAWRENCES APPENDIX IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 94-2309

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

WALTER J. LAWRENCE,

DEfendant-Appellant

_____/

BEFORE: BROWN, KENNEDY, and NORRIS,

Circuit Judges.

This pro se federal prisoner appeals a judgment of conviction on two counts of criminal contempt in violation of 19 USC 401(3) and 2. The case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanamously agree that oral argument is not needed, Fed. R. App. P. 34(a).

/

On July 12, 1994, Walter J. Lawrence was convicted by a jury on two counts of criminal contempt. Lawrence was found guilty of filing two bankruptcy petitions in the Northern District of Indiana in contempt of a February 19, 1991, order by the Bankruptcy Court for the Western District of Michigan which barred him from "filing any further cases until all cases now pending are closed and all appellate proceedings have been completed." Lawrence moved for a judgment of acquittal asserting that there were errors arising from a misstatement of where the crime was committed, he was denied his right to confront a witness, and his conviction violated the Double Jeopardy Clause. The District court denied the motion fro judgment of acquittal. On October

28, 1994, the district court sentenced Lawrence to twelve months of imprisonment. Lawrence appeals the judgment of conviction and sentence.

On appeal, Lawrence claims that: 1) he was prosecuted in violation of the Double Jeopardy Clause; 2) he did not violate 18 USC 401(3) because the bankruptcy court is not a "court" as contemplated by the statute; 3) the distict court determined that the bankruptcy court was not a court as contemplated by 18 USC 401(3), thus precluding his violation of the statute; 4) the district court improperly denied his motion for a change of venue; 5) he could not be imprisoned because he paid the special assessment, and the assessment was punishment for

purposes of the Double Jeopardy Clause; 6) the government did not prove the elements of the offenses set out in the indictment; and 7) he was denied the right to confront a witness against him.

Upon review, we affirm the district court's judgment. Lawrence was not prosecuted in violation of the Double Jeopardy Clause because jeopardy had not attached in the bankruptcy court proceeding as it lacked jurisdiction over the case. See Raforth v. National Union Fire, Ins. Co, (In re Baker & Getty Financial Services, Inc.) 954 F2d 1169, 1173-74 (6th. 1992); Schland v. Heard, 691 F.2d 796, 798 (5th. 1982), cert, denied and appeal dismissed, 461 U.S. 951, (1983); See also Guam v. Ferjeram, 686 F.2d 303, 303 (9th Cir. 1982) (an accuse

cannot be placed in jeopardy by a court lacking jurisdiction to decide his case), cert denied, 460 U.S. 1045 (1983). The district court and not the bankruptcy court imposed the criminal contempt in this case under 18 U.S.C. 401(3), and a criminal contempt action is within the district court's jurisdiction. See United States v. Guariglia, 962 F2d 160, 162-63 (2d Cir. 1992); Sander's Confectionary products, Inc. v. Heller Fin., Inc., 973 F.2d 474, 483 (6th Cir. 1992), cert, denied, 113 S.Ct. 1046 (1993). The district court properly denied Lawrence's motion for a change of venue as a contempt proceeding arising from a violation of an injunction is fundamentally connected to the court issuing the order.

Waffenschmidt v. MacKay, 763 F.2d 711, 716 (5th Cir. 1985), cert denied, 474 U.S. 1056 (1986). A special assessment does not constitute a multiple punishment for the same offense because it is not a "fine". United States v. McCargo, 783 F.2d 507, 510 (5th Cir. 1986), In addition, the district court did not impose either a fine or special assessment in this case. Lawrence paid a $100 special assessment in advance of sentencing at the suggestion of the United States Attorney's Office. That suggestion is not an order of the court. In fact, the district court specifically declined to order the payment of a special assessment in this case. Finally, there is no error in the indictment or in

the proofs, and Lawrence was not denied an opportunity to cross-examine Judge Nims because the judge was not a witness that appeared in the case to testify against Lawrence.

Accordingly, the district court's judgment is affirmed pursuant to Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

_____

Clerk

U.S. Department of Justice

United States Attorney
Western District of Michigan

August 29, 1994

Mr. Waltert Lawrence
23205 Gratiot, #188
Eastpointe, Michigan 48021

RE: United States v. Walter J. Lawrence
Criminal No.: 1:94-CR-45
Attorney No.: 9200490
Special Assessment

Dear Mr. Lawrence:

On October 11, 1994 you are scheduled to be sentenced before Judge Gordon J. Quist. Pursuant to the Comprehensive Crime Control Act of 1984 you will be ordered to pay a special assessment of $100. This special assessment will be due at the time of sentencing.

Since it is the responsibility of the United States Attorney to collect these special assessments, our office will ask the court to order immediate payment of the above amount at the time of sentencing. In order to eliminate any further hearings we would encourage that you mail us a certified check or money order in the above amount at least 72 hours prior to the sentencing.

Payments may be made either in person or mailed to the Clerk of the U.S. District Court. The check or money order should be made

payable to the Clerk, U.S. District Court. Their office is located in the fourth floor of the Ford Federal Building, located at 110 Michigan, Grand Rapids, MI. The mailing address is

Unted States District Court
Clerk's Office
452 Federal Building
110 Michigan Avenue, NE.
Grand Rapids, MI 49503

Their office hours are 8:30 a.m. to 5:00 p.m. Monday-Friday. The Debt Collection Agent assigned to your case is Kathy E. Schuette. If you have any questions, please contact her at 616 456-2404 or write to the address listed above.

Very truly yours.

MICHAEL H. DETTMER
United States Attorney

For MICHAEL L. SHIPARSKI
Assistant United States Atorney

IN THE UNITED STATES DISTRICT
COURT FOR THE
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

vs. File No: 1:94-CR-45

WALTER J. LAWRENCE

Defendant.

_____/

ORDER TO DEPOSIT FUNDS

Pursuant to an Order dated November 2, 1994, funds in the amount of One hundred Dollars ($100.00) were returned to teh defendant, Walter J. lawrence. Said junds represented the return of themoney previously paid by defendant. The defendant, Walter J. Lawrence, has subsequently refused to accept the $100.00 and has returned the money to the Court.

IT IS HEREBY ORDERED that said funds shall be deposited into

the Registry Fund of the Court pursuant to 28 US 2041. Said funds shall remain on deposit until further order of the this Court pursuant to 28 USC 2042.

Dated: De[illegible]-1994

[illegible]don J. Quist
U.S. District Judge